

AN ORDINANCE 2006-03-02-0294

SELECTING THE UNIVERSITY OF TEXAS AT SAN ANTONIO TO PROVIDE PROFESSIONAL CONSULTING SERVICES IN CONNECTION WITH THE MANAGEMENT PRACTICES FOR NATURAL WATERWAYS PROJECT; AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES CONTRACT WITH THE UNIVERSITY OF TEXAS AT SAN ANTONIO IN AN AMOUNT NOT TO EXCEED \$50,000.00 FROM TREE MITIGATION FUNDS.

* * * * *

WHEREAS, the University of Texas at San Antonio submitted a proposal for professional consulting services in connection with the Management Practices for Natural Waterways Project; and

WHEREAS, the Project will provide for the development of a single reference document available on the City's website, containing management practices, appropriate reference materials, and associated curriculums for training; and

WHEREAS, the document will be coordinated with an ad hoc committee of stakeholders listed in the Tree Preservation Ordinance and including at a minimum Bexar County, San Antonio River Authority (SARA), and the City's Parks and Recreation Department; and

WHEREAS, responses were received from two (2) qualified consultants; and

WHEREAS, the Public Works Architectural and Engineering (A/E) Selection Committee met and discussed the statements of qualification as well as their evaluations of the consultants, and after careful consideration, recommends that **the University of Texas at San Antonio** be selected for negotiation of a contract for said work; and

WHEREAS, approval of this Ordinance will be a continuation of City Council policy to fulfill the requirements of the Tree Preservation Ordinance and will enhance the City's understanding and management of environmental issues, **NOW THEREFORE;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The University of Texas at San Antonio is hereby selected to provide professional consulting services in connection with the Management Practices for Natural Waterways Project.

SECTION 2. City staff is authorized and directed to commence negotiations with **The University of Texas at San Antonio** to reach an agreement on a contract for such work at a fair and reasonable price not to exceed \$50,000.00.

SECTION 3. If a contract can be negotiated in accordance with the terms of the standard-form contract for engineering services, and in accordance with the price provisions contained herein, the City Manager or her designee is authorized to execute such an agreement without further City Council action. A copy of such standard form contract appears in substantially the same form as Attachment I and is incorporated by reference herein. Should a contract be negotiated which varies from the standard terms, the contract must be considered through a subsequent ordinance. If so, City Council must approve the contract terms and insure that the compensation provided meets the legal requirements set out in Section 2254.004 of the Texas Government Code.

SECTION 4. The following financial adjustments are hereby approved:

A. Funds for this expenditure are available in Fund 29619000, TREE PRESERVATION MITIGATION FUND, Cost Center 2990010001, TREE PRESERVATION MITIGATION, General Ledger 5201040, Fees to Professional Contractors, as part of the FY06 budget.

B. Payment not to exceed \$50,000 is authorized to the **University of Texas at San Antonio** and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

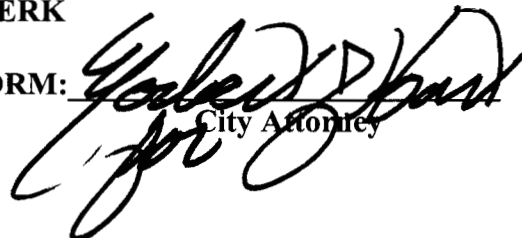
SECTION 6. This Ordinance shall be effective on March 12, 2006.

PASSED AND APPROVED this the 2nd day of March, 2006.


M A Y O R
PHIL HARDBERGER

ATTEST: 
CITY CLERK

APPROVED AS TO FORM:


City Attorney

Agenda Voting Results

Name: 13.

Date: 03/02/06

Time: 04:37:58 PM

Vote Type: Multiple selection

Description: An Ordinance selecting the University of Texas at San Antonio to provide professional consulting services in connection with the Management Practices for Natural Waterways Project; and authorizing the negotiation and execution of a professional services contract with the University of Texas at San Antonio in an amount not to exceed \$50,000.00 from Tree Mitigation funds. [Presented by Thomas Wendorf, Director, Public Works; Jelynn LeBlanc Burley, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2				x
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4			x	
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Agenda Voting Results

Name: 13. To deny

Date: 03/02/06

Time: 04:37:05 PM

Vote Type: Multiple selection

Description: An Ordinance selecting the University of Texas at San Antonio to provide professional consulting services in connection with the Management Practices for Natural Waterways Project; and authorizing the negotiation and execution of a professional services contract with the University of Texas at San Antonio in an amount not to exceed \$50,000.00 from Tree Mitigation funds. [Presented by Thomas Wendorf, Director, Public Works; Jelynn LeBlanc Burley, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1			x	
SHEILA D. MCNEIL	DISTRICT 2				x
ROLAND GUTIERREZ	DISTRICT 3			x	
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5			x	
DELICIA HERRERA	DISTRICT 6			x	
ELENA K. GUAJARDO	DISTRICT 7			x	
ART A. HALL	DISTRICT 8			x	
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR			x	

**PROFESSIONAL SERVICES AGREEMENT
FOR
Management Practices for Natural Waterways**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, or her designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2006 and The University of Texas at San Antonio, a component institution of The University of Texas System ("System") located at 6900 North Loop 1604 West, San Antonio, Texas 78249 ("University") by and through its Center for Water Research (hereinafter referred to as "University"), both of which may be referred to herein collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"University" is defined in the preamble of this Agreement and includes its successors.

"Directors" shall include the Directors of the City Development Services and Public Works Departments.

"Stakeholder" shall include but not be limited to Bexar County, San Antonio River Authority, the City's Parks and Recreation Department, one representative from the Cibolo Creek watershed, the Leon Creek Coalition, the Salado Creek Foundation, the San Antonio River Oversight Committee, the Land Heritage Institute (for the Medina River), and any additional stakeholders as identified by the City.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the terms of this Agreement shall commence on the effective date the Ordinance passed and approved by City Council and terminate on the earlier of either project completion or February 28, 2007.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

ATTACHMENT I

**To Ordinance No. _____
Passed and approved March 2,
2006.**

III. SCOPE OF SERVICES

- 3.1 University agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV, Compensation.
- 3.2 University shall perform its obligations under this Agreement in accordance with the Request for Proposal issued September 6, 2005, (Exhibit "A"), University's Proposal, submitted October 17, 2005, (Exhibit "B") and the Final Agreed Upon Scope of Services (Exhibit "C") which includes a list of services, associated fees and project timeline, all of which exhibits are attached hereto and fully incorporated verbatim for all purposes. University will be compensated in accordance with Exhibit "C." Should there be any conflict between the terms of the Request for Proposal, University's Proposal, Final Agreed Upon Scope of Services, or any other contract documents, and terms of this Contract, the terms of this Contract shall be final and binding.
- 3.3 All work performed by University hereunder shall be performed to the satisfaction of Directors. The determination made by the Directors shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by University, which is not satisfactory to Directors. City shall have the right to terminate this Agreement, in accordance with Article VII, Termination, in whole or in part, should University's work not be satisfactory to Directors; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. However, University shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date.

IV. COMPENSATION TO UNIVERSITY

- 4.1 In consideration of University's performance in a satisfactory and efficient manner, as determined solely by Directors, of all services and activities set forth in this Agreement, City agrees to pay University an amount not to exceed Fifty Thousand dollars (\$50,000.00) as total compensation, to be paid to University in the following amounts upon completion of each task: and University's submission of an invoice:

Task A	\$30,000.00
Task B	\$ 5,000.00
Task C	\$ 5,000.00
Task D	\$ 5,000.00
Task E	\$ 5,000.00

- 4.2 No additional fees or expenses of University shall be charged by University nor be payable by City. The parties hereby agree that all compensable expenses of University have been provided for in the total payment to University as specified in Section 4.1 above. Total payments to University cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.
- 4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Directors. City Directors will make payment to University following written

approval of the final work products and services. City shall not be obligated or liable under this Agreement to any party, other than University, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

- 5.1 Upon completion any and all writings, documents or information in whatsoever form and character produced by University pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by University.
- 5.2 University understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 5.3 Notwithstanding any other provision to the contrary, University or University's investigator(s) shall have the right to publish any results, information or data associated with the Project.

VI. RECORDS RETENTION

- 6.1 University and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 University shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, University shall retain the records until the resolution of such litigation or other such questions. University acknowledges and agrees that City shall have access to any and all such documents at any reasonable time with 48 hours notice, as deemed necessary by City, during said retention period. City may, at its election, require University to return said documents to City prior to or at the conclusion of said retention.
- 6.3 University shall notify City immediately, in the event University receives any requests for information from a third party, which pertain to the documentation and records referenced herein. University understands and agrees that City will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "Termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II, Term, or earlier termination pursuant to any of the provisions hereof.

7.2 **Termination Without Cause.** This Agreement may be terminated by either party upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VIII, Notice.

7.3 **Termination for Cause.** Upon written notice, which notice shall be provided in accordance with Article VIII, Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI, Assignment and Subcontracting.

7.4 **Defaults With Opportunity for Cure.** Should University default in the performance of this Agreement in a manner stated in this Section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. University shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII, Notice, to cure such default. If University fails to cure the default within such fifteen day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against University's future or unpaid invoice(s), subject to the duty on the part of the City to mitigate its losses to the extent required by law. The University shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that University's performance upon which final payment is conditioned shall include, but not be limited to, the University's complete and satisfactory performance of its obligations for which final payment is sought.

7.4.1 Failure to comply with the terms and conditions stated in Article XIII, Historically Underutilized Business Program.

7.4.2 Failing to perform or failing to comply with any covenant herein required.

7.4.3 Performing unsatisfactorily.

7.5 **Termination by Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, University shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by University, or provided to University, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by University in accordance with Article VI, Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written

request by City and shall be completed at University's sole cost and expense. Payment of compensation due or to become due to University is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, University shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through effective date of termination. Failure by University to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by University of any and all right or claims to collect monies that University may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon effective date of expiration or termination of this Agreement, University shall cease all operations of work being performed by University or any of its subcontractors pursuant to this Agreement.

7.9 **Termination not sole remedy.** In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or equity, City's right to seek damages from or otherwise pursue University for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City to: Mailing Address: Development Services Department, Director
P.O. Box 839966
San Antonio, TX 78283-3966

Physical Address: Development Services Department, Director
1901 S. Alamo
San Antonio, TX 78204

If intended for University to: The University of Texas at San Antonio
Attn: Carol Hollingsworth, Director
Office of Grants and Contracts Administration
6900 North Loop 1604 West
San Antonio, Texas 78249

IX. INSURANCE

9.1 It is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

X. TEXAS TORT CLAIMS ACT

10.1 University and the City acknowledge they are either a state agency or a political subdivision of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. University shall promptly advise the City in writing of any claim or demand against the City or University known to University related to or arising out of University's activities under this Contract. **University shall promptly advise the City in writing of any claim or demand against the City or University known to University related to or arising out of University's activities under this Contract.**

XI. INDEMNIFICATION

11.1 University and the CITY acknowledge they are political subdivisions of the State of Texas and/or state agencies and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

11.1.1 University is self-insured for purposes of potential liability. University may consider and settle any claim for money damages for injury or loss of property or personal injury or death based on the wrongful act or negligence of its employees acting within the scope of their employment. University does hereby indemnify and save harmless the City, its officers, agents, representatives, and employees from all claims, loss, damage actions, causes of action, expense and professional liability resulting from, brought for, on account of, any claim for money damages for injury or loss of property or personal injury or death based on the wrongful act or negligence of University's employees acting within the scope of their employment.

11.1.2 City is self-insured for purposes of potential liability. City may consider and settle any claim for money damages for injury or loss of property or personal injury or death based on the wrongful act or negligence of its employees acting within the scope of their employment. City does hereby indemnify and save harmless the University, its officers, agents, representatives, and employees from all claims, loss, damage actions, causes of action, expense and

professional liability resulting from, brought for, on account of, any claim for money damages for injury or loss of property or personal injury or death based on the wrongful act or negligence of City's employees acting within the scope of their employment.

11.1.3 In the event that University and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without however waiving any governmental immunity available to and without waiving any defenses of the parties under Texas Law.

11.2 This agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

XII. PERSONNEL QUALIFICATIONS

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

XIII. INDEPENDENT CONTRACTOR

13.1 University covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that University shall have exclusive control of and exclusive right to control the details of this work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Universitys; that the doctrine of *respondeat superior* shall not apply as between City and University, its officers, agents, employees, contractors, subcontractors and Universitys, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and University. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the University under this Agreement and that the University has no authority to bind the City.

XVI. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

The University is mandated to develop, implement and maintain a Historically Underutilized Business ("HUB") Program which is governed by Texas Government Code, Section 2161.181-182 and Section 111.11 of the Texas Administrative Code

XV. CONFLICT OF INTEREST

15.1 University acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial

interest" in a contract with the City or in the sale to the city of land, materials, supplies, or service, if any of the following individual(s) or entities is a party to the contract or sale; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, University warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employee or the City. University further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and University, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

University warrants and certifies that University's employees engaged on this Contract have the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

IX. COMPLIANCE

University shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NON-WAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed

or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV, Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. APPLICABLE LAW

City acknowledges that University is a state agency and institution of higher education established under Texas law and governed by the Board of Regents of the University of Texas System. Therefore, notwithstanding anything in the Contract to the contrary, University agrees to comply with state and federal laws as described herein only to the extent such laws apply to University and University agrees to comply with City laws and policies only to the extent such laws and policies do not conflict with federal or state laws or policies applicable to University. Additionally City and University agree that, notwithstanding anything in the Contract to the contrary, (a) nothing in this Agreement shall preclude, waive or limit any claim of University or the State of Texas or University's or the State's right to seek redress in the courts, (b) neither University's nor City's failure to act in accordance with any provision of this Agreement shall preclude, waive or limit any claim of University of the State of Texas or University's or the State's right to seek redress in the courts, and (c) neither the execution of this Contract by University nor any other conduct, action or inaction of any representative of University relating to this Contract constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit.

XXII. LEGAL AUTHORITY

The signer of the Agreement for University represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of University and to bind University to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit C – Final Agreed Upon Scope of Services

Exhibit A – City’s Request for Proposals for Management Practices for Natural Waterways dated September 6, 2005

Exhibit B – University’s Proposal for Management Practices for Natural Waterways dated October 17, 2005

XXV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVII, Amendments.

EXECUTED and AGREED to this the _____ day of _____, 2006.

CITY:
CITY OF SAN ANTONIO

UNIVERSITY:

City Manager

Pam Bacon
Associate Vice President for
Administration

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

EXHIBIT "C"
FINAL AGREED UPON SCOPES OF SERVICES
Page 1 of 2

The University will provide the following tasks:

- A. Plan for and conduct a series of meetings with the Committee to:
 - 1. Review existing documents as provided by stakeholder members;
 - 2. Assess existing positions among the members;
 - 3. Educate the members on the subjects of storm water conveyance engineering, fluvial geomorphology, and ecology (with an emphasis on riparian vegetation, wildlife and restoration);
 - 4. Arrange field trips with Committee to visit several locations within various local area watersheds to review the physical conditions, assets and limitations;
 - 5. Manage the process and develop a consensus among the Committee members on an outline of recommended management practices and appropriate reference material;
 - 6. Prepare and present draft(s) to the Committee for review, discussion, refinement, and acceptance and make this information available for review and comment by the general public.
- B. Present the final draft Management Practices document to the City Council's Urban Affairs Committee, Bexar County Regional Watershed Committee and Linear Corridor Committee for adoption.
- C. Finalize the Management Practices document. Print and bind ten hard copies for the City. Printing should be done double-sided.
- D. Develop a curriculum, develop appropriate training tools/materials, and conduct two training workshops on the Management Practices: one appropriate for governmental technical staff, landscape architects and consulting engineers (develop training so that there is continuing education or professional credit available for attendees) and one for maintenance personnel and homeowner association members.
- E. Provide Management Practices document with introduction and appropriate hyperlinks in Adobe Acrobat format and MS Word format suitable for downloading from the City website.

EXHIBIT "C"
FINAL AGREED UPON SCOPES OF SERVICES
Page 2 of 2

TASK	PROJECT MONTH												Meeting	Fee Sched.
	Mar-06	Apr-06	May-06	Jun-06	Jul-06	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06	Jan-07	Feb-07		
<u>Meet with Stakeholder Committee:</u> Discuss scope, member positions and needs; acquire existing documents													√	\$30,000
<u>A.1</u> Review existing documents as provided by stakeholder committee														
<u>A.2</u> Assess existing positions among the stakeholder committee														
<u>A.3 Meet with Stakeholder Committee:</u> Education on storm water conveyance engineering, fluvial geomorphology, and ecology													√	
<u>A.4 Meet with Stakeholder Committee:</u> Arrange field trips to visit local waterways and review physical conditions, assets and limitations													√	
Distribute draft outline of recommended management practices to Stakeholder Committee (by e-mail) for review														
<u>A.5 Meet with Stakeholder Committee:</u> Develop a consensus among the Stakeholder Committee on an outline of recommended management practices													√	
<u>A.6</u> Prepare draft Management Practices document														
Distribute draft Management Practices document to Stakeholder Committee (by e-mail) for review														
<u>Meet with Stakeholder Committee:</u> Present draft Management Practices document for review, discussion, refinement, and acceptance													√	\$5,000
<u>B Meet with Urban Affairs Committee:</u> Present the final draft Management Practices document to the City Council's Urban Affairs Committee for adoption													√	
<u>C</u> Finalize the Management Practices document														\$5,000
<u>D</u> Develop a curriculum and training materials for two training workshops														\$5,000
<u>Train City Employees and Interested Parties</u>													√	\$5,000
<u>E</u> Submit final Management Practices document														